UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of

No. 17 BK 3283-LTS
No. 17 BK 3566-LTS
No. 17 BK 3667-LTS
No. 17 BK 4780-LTS
(Jointly Administered)

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.

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New York, N.Y.
June 28, 2019
10:00 a.m.

Before:

HON. LAURA TAYLOR SWAIN

District Judge

HON. JUDITH GAIL DEIN

Magistrate Judge

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(In open court)

JUDGE SWAIN: Buenos dias. Please be seated.

(Case called)

JUDGE SWAIN: Again, good morning, parties, counsel, and interested members of the public and the press here in New York and in San Juan, and to the telephonic participants.

We're here today for oral argument on four motions. First, the urgent joint motion for approval of a stipulation between the special claims committee and the official committee of unsecured creditors relating to joint prosecution of certain causes of action of PREPA, which is docket entry 7519, and then we'll hear two motions together, the urgent motion of the unsecured creditors committee for an order pursuant to Section 926, which is docket entry 7484, and the urgent motion of the oversight board to approve a stipulation authorizing joint litigation of certain matters with AAFAF, which is docket entry 7686. And then finally, the fourth motion on the agenda is the omnibus motion of the special claims committee regarding certain litigation case management procedures and procedures for the approval of settlements, docket entry 7325, and Judge Dein will preside over that aspect of today's proceedings.

So, before we begin, my usual reminder. Consistent with court and judicial conference policies and the orders that have been issued there is to be no use of any electronic devices in the courtroom to communicate --

THE DEPUTY CLERK: Judge, one second.

Okay, Judge.

JUDGE SWAIN: Were we on at all before?

THE DEPUTY CLERK: No.

JUDGE SWAIN: We're live with Court Solutions. Belated greetings to those who are joining us telephonically from Court Solutions. I went over the four matters that we'll hear today. This is Judge Swain. The first three of them I will hear, and then Judge Dein will hear the motion relating to the litigation and settlement approval procedures, and you're just in time for my usual warning about electronic devices which I will recommence now.

I remind you that consistent with court and judicial conference policies and the orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source or outside repository of information, nor to record any part of the proceedings.

Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents that are already loaded on to the device. All audible signals, including vibration features, must be turned off. No recording or retransmission of the hearing is permitted by any person, including, but not limited to, the parties or the press.

Anyone who is observed or otherwise found to have been

texting, e-mailing or otherwise communicating with a device from a courtroom during the court proceeding will be subject to sanctions, including, but not limited to, confiscation of the device, and denial of future requests to bring devices into the courtroom.

Counsel, I remind you that due to technological limitations in this courtroom, the only live microphone for you to use will be the microphone located at the podium. And please remember to speak clearly and directly into that microphone, when you come up, so that the people in both courtrooms as well as those listening in via Court Solutions will be able to hear clearly. And I thank you all for continuing to cooperate with these procedures.

So with that we'll turn to our first agenda item, Mr. Despin.

MR. DESPIN: Good morning, your Honor. Luc Despin with Paul Hastings on behalf of the committee.

This really not should not be controversial. No objections were filed. And just to set the record, on this, this is the joint motion of the special claims committee and the committee to prosecute jointly certain what would be referred to before as garden-variety avoidance actions. So these are vendors that receive payments that should be recoverable. And in the past, I've described generally what these were and I'll do that again.

So these are folks that either have received a preference or fraudulent transfer, and in total, I would say that we're talking about around 10 entities. Some of those may enter into tolling agreements and therefore they will not be sued, so if people see only seven complaints, it doesn't mean that we don't have tolling agreements with others. It will be around 10. This is still fluctuating because there is still some last-minute review that's being done, but around 10 entities will be the targets and they're all of the garden-variety type of claims that your Honor has seen before for the Commonwealth and for HTA.

JUDGE SWAIN: Do you have the same sort of minimum floor?

MR. DESPIN: Yes, your Honor. And so that those, that those floors were used and, in fact, more than that, some vendors were excluded because in the opinion of the oversight board, they were critical vendors, so therefore, so we're trying to minimize the impact which was felt in the past regarding the Commonwealth and HTA. But yes, we're using generally the same floors, not to sue people for small amounts etc., etc. Yes.

The only thing, your Honor, is that you may have noticed that on June 26 we filed a revised stipulation to address the concerns of the PREPA lenders, bondholders I should say, because they were concerned that perhaps this stipulation

could be read as authorizing us to bring claims against them and we have clarified that no, this stipulation does not authorize that, that doesn't contemplate that at all. I believe they've seen that revision. It's in docket no. 7673, we modified two provisions of the stipulation. And also I believe, your Honor, that we sent to your Honor a Word version of the order that reflects those changes.

So that's really all I have to say about the stipulation, your Honor, at this time. Unless you have questions.

JUDGE SWAIN: No, I don't. And so I'll just state my ruling.

Before the Court is the movant's unopposed urgent joint motion for entry of an order approving stipulation and agreed order between the Special Claims Committee of Financial Oversight & Management Board and Official Committee of Unsecured Creditors related to joint prosecution of certain causes of action of Puerto Rico Electric Power Authority. Docket entry number 7519 in case 17-3283. I'll refer to that as the motion. A revised proposed stipulation has been filed at docket entry number 7673.

The Court has considered carefully the motion and the terms of the revised proposed stipulation. For the reasons stated in the unopposed motion, and for substantially the reasons stated on the record of the April 24, 2019, and

June 12, 2019 omnibus hearings, in connection with similar stipulations regarding the Commonwealth, HTA and ERS related litigations, the motion is granted.

The Court will enter an appropriate order approving the revised stipulation, and I am assuming from what you what you've said, we already have that in Word form.

MR. DESPIN: Yes, your Honor. But we're happy to resubmit it.

JUDGE SWAIN: We'll let you know if we need that.

MR. DESPIN: Thank you, your Honor.

JUDGE SWAIN: Thank you very much.

So now we go to what I am calling agenda items two and three. The two motions concerning co-trustee appointments under Section 926, which were initiated at docket entry 7484 and 7686. I will hear them together, and we have allotted 45 minutes in total. And Mr. Despin, you're starting out with 14 minutes I believe.

MR. DESPIN: That's correct. And I'm leaving seven and a half for the reply at the end.

JUDGE SWAIN: Yes.

MR. DESPIN: Okay, your Honor. Thank you.

First I think I'd like to start -- and by the way, I'm not going to repeat everything that's in our papers. I know we've been at this two years, I know you've read everything, so I won't go through all of that. But I wanted to give your

Honor an update. President Trump submitted the current board members for reappointment until the end of their current term which will be some time in August.

JUDGE SWAIN: I read the newspapers too.

MR. DESPIN: Okay. So that was submitted. But I want to say there's no doubt that that will not be acted on between now and Monday. Monday being the statute of limitation deadline.

So let me jump right into it, your Honor. The statutory basis is refusal. So that's the first threshold issue. And our belief is that, given the current state of play, which is that the First Circuit has determined that the appointment was legal, there are petitions that were granted by the Supreme Court on both sides of the issue, one saying -- so you know all this.

JUDGE SWAIN: I read that in the paper too.

MR. DESPIN: Okay. Given all that, that there is a risk, and I would say a real risk that the board could be found to be currently acting without authority. And so I would start with the following principle, which is if the board told us today that they intended to file the complaint on Tuesday, or let's say on Wednesday to make it very clear, and that they have all sorts of reason why that's still timely, etc., etc., I don't think that anyone would say that's not refusal.

So, we will say that's not what they're doing.

They're telling us they will file. Our point is given the current real uncertainty about their power to act, we believe that we fit within the refusal provision of the statute.

Obviously, if you don't believe that, I think that's the end of the inquiry. And so, if that is a refusal -- and I think they don't discard that risk. So they are saying but we've addressed that risk by adding AAFAF as a party.

So, the first point there is that the party they're adding is a party as the oversight board. But that signed an agreement to allow those claims. So the stipulation they have, the RSA agreement that's not before the Court today, but that's not going to be before the Court until September 11, really supports massive payments being made to those holders, which entail that those claims are valid and not subject to challenge. So from a positional point of view the board and AAFAF have, are supporting this.

JUDGE SWAIN: So they're proposing to settle the issues regarding -- I think they would tell me they were proposing to settle the claims in the manner laid out in the RSA.

MR. DESPIN: Correct. But to be clear, that's inconsistent with the position that these claims are worth zero. So we're not getting to that now. But the point is --

JUDGE SWAIN: Even you are proposing to hold off lien challenge litigation until a determination is made as to

whether the 9019 is the approved or not.

MR. DESPIN: That's correct. But my point is to have both parties as co-plaintiffs supporting or not advocating the avoidance of those claims is really counterintuitive for a 926 motion. Because the purpose of 926 is to get the government out of the picture so that the claims can be pursued. And we're not proposing to be pursued. Our point is if Supreme Court rules that they're without authority today, then under their stipulation, the party that would remain standing there would be AAFAF.

And the point is that that shouldn't be because that is the debtor or at least they purport to be the debtor in that case, as well as now they are saying they are the creditor. So it makes no sense from a 926 point of view to have the entity that supports these claims be the party challenging the claims. That's the first part.

JUDGE SWAIN: Well, but we're not talking about intercreditor litigation. We're talking about litigation that if it's brought that will be for the benefit of the estate of PREPA. And as has been pointed out many times, all of PROMESA has the board as the point person for all the Commonwealth entities. Normal governmental structures have the Commonwealth at the top of all of its tree of entities. It's not a bizarre situation. And PREPA wouldn't be suing PRASA or vice versa in these particular litigation scenarios.

So, I see your structural point, but I don't see it as a house-on-fire structural point.

MR. DESPIN: No. But the point is that to have the entity that is suing or potentially asserting those claims to be the debtor when PROMESA said that the oversight board is acting for the debtor in the context of these cases, Title III cases, there's no doubt about that. And now to effectively delegate to the entity that Congress has said should not be involved in the conduct of a Title III case turns PROMESA and 926 on its head. That's our position, your Honor.

On top of that, we don't believe that they are -- that they have the statutory capacity to do that, under the statute that appoints them. And there's very specific language about what they can do in terms of litigation and that's not it. And that's where there is a big difference between the right to be heard. Of course they have the right to be heard. But the right to be heard under the code does not cure any statutory or local law capacity issues that they may have. And under the statute that we cited, we believe that they don't have the capacity. And they don't have the capacity to be the creditor moving under 926. And you can see from the proof of claim that that's not them that filed it, it is the entity itself. PRASA.

JUDGE SWAIN: But your committee and specifically PREPA creditor, a member of your committee, has made a motion and so it's cued up the issue of 926. Why isn't it sufficient

that you've put the issue on the table for the Court to take action?

MR. DESPIN: Because we filed a motion to appoint the committee as the trustee and no one else.

JUDGE SWAIN: But the Court isn't bound by your preference. The Court has discretion to choose an appropriate trustee, which may or may not be you, correct?

It's only a problematic refusal if it is a refusal that results in you being appointed, and otherwise that's not a problematic refusal? That would be sort of an odd position.

MR. DESPIN: We filed a motion to appoint the committee as a trustee. If you believe that gives you the power to appoint somebody else, that may be. But I think I would, at the end of the day, your Honor, it all depends on our tolerance or your tolerance for risk. Meaning, that we're dealing with $8 billion of claims. There's no doubt that the objections are valid and valuable, let's put it that way, because the board has taken the position that these people have zero collateral. Remember those quotes from the paper. Zero collateral. You only get there if you file these objections. And the point is if we turn out to be wrong, meaning that this fix, the AAFAF fix, doesn't fix the issue, then we're in a world of hurt. And that's the committee's position.

So, I'm not saying more clearly than that. It's, given what we're dealing with here, we are not dealing with a

discovery dispute or something like that. We're dealing with all or nothing. Either a court will determine one day that these claims were timely brought or not, based on this issue, and in that context, why should the -- you use the term estate -- the debtors take any risk?

JUDGE SWAIN: Well, isn't there a risk if we get into a worst-case scenario from the perspective of the non-Aurelius count? Meaning, if Aurelius wins, the appointment is unconstitutional, the Title III is unconstitutional, and the UCC was appointed in the context of the Title III. And if the Title III is invalidated, don't you go poof also? Maybe the adversary goes poof, maybe not, since it was filed to preserve certain statutes of limitations periods and preserve certain claims, I don't know. I haven't thought that far down the road.

But isn't there a possibility in the worst case you go poof because you were created within the Title III, but AAFAF was created by the government of Puerto Rico, and unless the Supreme Court says that's illegitimate too, it may be AAFAF is an entity that survives all that.

MR. DESPIN: Your Honor, I think that's the easiest point which is we made in our objection yesterday. If the Title III cases are void ab initio, everything we're doing, including what we're doing right now, is irrelevant. Meaning that we're only trying to deal with what is fixable. If the

Court, Supreme Court rules that it is void ab initio, that there is nothing we can do now that fixes that issue. And the 546 statute of limitations will not have run because there is no case. There is no case pending.

But, what we can fix is the argument that, since its appointment, the board has been acting illegally. That's in the Supreme Court cert petition which is here. That's a petitioner in this case. They say that black and white. That is fixable, and it is a guarantee that it's fixable through the appointment of the committee in the sense that, yes, if all the cases go poof, then we can't fix that. But, if what is fixable is what I just described, and there's no doubt that the committee appointment does that.

And therefore, I go back to this same point which is, given the amounts at stake, shouldn't there be a zero risk approach? And it's no answer to say that the whole case could all go away. That's true, but there's nothing we can do to fix that today. What we can do today is preclude a windfall, a potential windfall to the purported secured creditors at PREPA.

JUDGE SWAIN: May I ask you a question. In your opposition to the cross motion, you called out a particular provision of the proposed Oversight Board AAFAF stip and said it should be clarified to reflect that it is not otherwise binding on entities that are not parties to it. And I would just like you to explain to me why you're seeking that

modification if I were to go that way.

MR. DESPIN: I think it's been fixed. This is an issue that was raised by the fuel line lenders, and my understanding, Mr. Kleinhaus will be up here in a minute. He'll explain that he has an agreement with the board with some language in the event that your Honor were to sign the AAFAF stipulation. So it's been resolved.

JUDGE SWAIN: Thank you.

MR. DESPIN: That issue has been resolved. Thank you.

JUDGE SWAIN: Thank you.

Good morning Mr. Barak

MR. BARAK: Good morning, your Honor. Ehud Barak, Proskauer Rose for the oversight board as representative of PREPA.

JUDGE SWAIN: And you have eight minutes.

MR. BARAK: That's right. I think I'll go just procedurally, I'll start with our motion and answer reply to Mr. Despin's motion as I go along, make it more efficient.

I think where we are in the case is the oversight board motion is reasonable, it mitigates the risk, it preserves the causes of action, it allows oversight board to retain control of the case and move forward with the PREPA RSA. That's the best of both worlds, your Honor.

This is, in addition to that, it is the most efficient outcome because should the Court really approve the RSA, then

we don't have to replace a trustee or be in violation of the Court's order the moment it is entered.

The fact that the committee's continuing their motion after we already agreed to enter into the stipulation with all other causes of action of PREPA, and the fact that we basically proposed the solution before the Court, gets me to only one conclusion. That the committee wants to retain this cause of action for leverage. No other reason, your Honor.

The committee argues that it is an insurance, and tried to basically come up with an argument that AAFAF, the Commonwealth entity with the Enabling Act is for some reason it doesn't have the capacity to be a trustee. I think my colleague from O'Melveny will address more specifically why this Enabling Act for AAFAF is compliant to have the capacity to do, to act as a 926(a) trustee.

I think the committee is playing a dangerous game in their attempt basically to say that AAFAF doesn't have capacity because the statute doesn't provide for it. They're forgetting that Section 1103 of the bankruptcy code which enumerates the power of the committee doesn't say that the committee can be a trustee. It only says the committee can ask to appoint a trustee. Raising this type of argument is counterproductive and might come back at us, both the committee and the oversight board if somebody later in the future adopts this kind of argument and tries basically to attack the stipulation. And

all this is done only to retain leverage here and to retain control over without thinking of the repercussions of those arguments.

For the avoidance of doubt, the oversight board believes both the committee and AAFAF has the capacity to be a 926(a) trustee.

Going through the prongs of 926(a) and basically our motion, I think your Honor was correct, we fully agree that once a creditor files a motion for 926(a), we meet the requirements on a preliminary request of the creditor. It doesn't matter who the creditor is.

I think, in addition to the creditor that moved with the UCC, we have AAFAF is representative of PRASA, which is also an unsecured claim holder of PREPA. So we think independently we meet this criteria.

Since the oversight board has consented to AAFAF being a co-plaintiff and will not bring the lien challenge alone, there is constructive refusal vis-a-vis the oversight board agency's motion so we meet the second prong.

Independently of 926(a), we think that there is an additional route to find that AAFAF could be a co-trustee with the oversight board and that's a derivative potential standing. Committee counsel attacked that route, but he forgets he himself raised that as one of the reasons that the committee could be appointed as a trustee.

Your Honor in the April 24 decision on page 237, line 16 to 19, mentioned this as an independent reason why she is approving the stipulation appointing the committee as being a co-plaintiff and mentioning SDN. So, for him now to argue that this is for some reason subject to the Aurelius risk is at least disingenuous.

To answer to the question itself in its papers, I don't thinking it is subject to the Aurelius risk because eventually the power that appoints AAFAF as a co-trustee is not necessarily the derivative standing of the board, but rather the Court's order. And the Court's order, the power of the Court emanates from the Constitution and Article III and this Aurelius decision does not affect that.

But I really think what's before us today is not necessarily should there be a trustee, but I think more who is an appropriate trustee. And the Court mentioned, and we think the Court is right that the Court has a very wide discretion in choosing who the trustee should be. And the oversight board submit it should be AAFAF, and there is a few reasons for that.

Appointing AAFAF will disrupt the RSA, and stability is extremely important not just for the RSA. There is a transformation process that is going on, and stability in continuing with the path toward the Title III emergents is extremely important. The reason we are doing the RSA with the bondholders, part of it is to get to that transformation. And

having the committee insert themself in any way in taking any actions that are not coordinated with the board is putting that at risk.

If you look at the committee proposed stipulation, Section 8, if it was a joint stipulation, like it was entered in the RSA or HTA, they reserve the right if they don't agree with how the timing or it's being -- the cause of action are not prosecuted timely, they can move to the Court to be sole trustee. I'm not saying they are going to do it, but it's a backdoor. And we are really concerned about moving the process in an efficient manner, and this is why it's important for the oversight board to retain control over the case.

JUDGE SWAIN: Mr. Despin has said that he would hold off anything until after the resolution of the 9019, and I think he's represented in his reply papers that he would not seek to take inconsistent independent action at least while the 9019 is in play.

Should I not take his representation as an officer of the court?

MR. BARAK: Absolutely, yes, and Mr. Despin, his word is good. But nothing prevents him from putting a motion before the Court to urge the Court to the change this. This is what Section 8 that I was referring to. And basically this only party a motion can interject noise into the system that is not necessary when trying to run such a delicate process here.

I think it's not so much as why the committee shouldn't be but more why AAFAF should be a co-trustee. I think it is important to think that the alignment of interest between AAFAF and oversight board, which in many cases are rare and here in PREPA there is actually alignment of interest that is very constructive, is extremely important because it basically allows a process to move forward with RSA. And if there is no RSA, if we can't make it consensual, if the Court doesn't approve this deal, we will be there to prosecute these causes of action. It is just a matter of giving peace a chance. That's all we are doing here.

Just one response to Mr. Despin who said 926 is exactly those situation where there isn't alignment of interests, when there is adversary with the debtor. Let's not forget we are under constructive refusal here. It is not a real refusal. We are going to bring the lien challenge.

So to say that there must be some sort of adversarial issue between the committee or between the trustee that's going to be bring this and the debtor. It might be true in 926 but not here. But even Colliers, with respect to real refusal on the 926, states that even when the Court appoints a trustee -- I am quoting now -- the Court should be reluctant to appoint a trustee to take over for the debtor in exercising these powers. These powers are avoidance powers.

So basically, even in 926, the issue of giving the

debtor control to move the cases is very important and is not being done lightly. I think it shouldn't be done here. Especially when we have a fix that works.

I want to make sure I cover all my bases here. The last point basically is that appointing the committee as trustee now that might be the Court enters a 9019 order is inefficient, it's wasteful, especially when we have a valid alternative that's ready to go right now and we can file the lien challenge on Monday.

I'll now cede the podium to Mr. Shamah if that's okay, your Honor.

JUDGE SWAIN: Thank you.

MR. SHAMAH: Daniel Shamah, O'Melveny & Myers on behalf of AAFAF. Eight minutes for me as well.

Just to pick up on your question at the end, I will address the question of why AAFAF is perfectly empowered to be a co-movant and a co-trustee in the circumstance under the plain language of the Enabling Act.

But to pick up on one point that your Honor asked about Mr. Despin's representation about not pursuing the lien challenge until after the 9019 is approved. That's the first step, and he conspicuously has not made the representation if the 9019 is pursued, that he wouldn't seek to pursue the lien challenge before confirmation of a plan of adjustment, should your Honor approve the RSA under in the 9019 motion. And that

will inject a significant degree of instability and uncertainty into this process. So I don't want that to be lost.

Your Honor, I am going to address the specific question of why under the Enabling Act AAFAF is authorized to both be the co-movant and the co-trustee in connection with the lien challenge.

I think, your Honor, it's worth taking a look at the actual language of the statute because both sides cite various provisions of it. It is worth looking at it. I have copies of it if you'd like to have it with you so we can walk through a couple specific provisions.

JUDGE SWAIN: Thank you. That will save me opening my iPad.

MR. SHAMAH: I have copies for others. Your Honor, I don't think there's much of a dispute that if AAFAF has the -- if the scope of the relief being sought falls within the purpose and authority of AAFAF under the Enabling Act, then AAFAF has the right to take any convenient or necessary lawful action to pursue those purposes. That's found in Section 5(d). The preamble, which is on page 11 of the statute, which specifically says that AAFAF has all rights and powers as is necessary. It specifically says including but not limited to those authorities. Then as we reference in our papers, xiv is a residual catchall authority that basically gives them the right to take whatever actions they need that they determine

are appropriate and necessary to pursue its purposes and to exercise the powers that are conferred upon it.

So the question then, your Honor, is what is the purpose of AAFAF, and what are AAFAF's powers under the Enabling Act. I want to draw your attention to three specific provisions of the Enabling Act.

The first is Section 2, your Honor, on page seven. That section is titled "public policy." I am quoting here.

"It is hereby declared the public policy of the government of Puerto Rico that AAFAF is the leading public corporation and instrumentality responsible for coordinating" and then it goes on and it specifically says at III that one of their responsibilities is negotiating the debts repayment terms. So their responsibilities include things like addressing the debt obligations of Puerto Rico.

The second is Section 5(a), your Honor, on page nine. This is a provision that both sides cite. It relates to their created for the purpose of acting as a fiscal agent.

I think both the committee kind of glosses over the breadth of the term "fiscal agent." It is not defined in the statute, but if you are looking at a dictionary definition, Investopedia, which is a reputable financial dictionary, it is an organization that acts on behalf of another party performing various financial duties.

Again, it is an incredibly broad mandate when you're

acting as a fiscal agent. We are specifically talking about the creditor piece of this analysis. Certainly AAFAF acting on behalf of PRASA in connection with its debts and obligations and the claims it has against PREPA, that is precisely what a fiscal agent would do. It is a financial function that it's performing on behalf of its principal, in that instance PRASA.

Lastly, your Honor, if you turn to page 10, Section 5(c), this is a section that deals -- the first sentence deals with GDB, but the second sentence doesn't. It specifically says that AAFAF shall "oversee all matters related to restructuring, renegotiation, or adjustment of any existing or future obligation of the government of Puerto Rico."

It's incredibly broad, your Honor. The lien challenge that we're proposing that AAFAF be a co-trustee on fits squarely within the mandate of the authority that AAFAF has as the representative of all -- as the representative of all these various entities, under the local Puerto Rico law, to address the fiscal and economic crisis that Puerto Rico faces and the debt obligations of PREPA.

The committee's argument, essentially, as I understand it, is there is nothing in the statute that specifically says AAFAF is authorized to be a trustee. But, that's by design. The statute, as I sort of started off with, specifically grants flexible authority to AAFAF. 5(d) where we started specifically says that it's not delineating specific powers to

the exclusion of other things that AAFAF may have to do. It is AAFAF has the power to pursue whatever it needs to do to fulfill its purposes and to exercise the powers that the Puerto Rico government conferred upon it.

And the same can be true, and Mr. Barak alluded to this, the same can be true of the committee. Nothing in 1103 says the committee can be a trustee. The committee draws that power from its residual power under 1103(c)(5) to pursue the interests of the general unsecured creditors. And the reason why courts have found under SDN and others that committees can be trustee under the right circumstances to pursue estate causes of action is because they recognize that those two things work hand in hand.

Their argument that somehow they're different because they are a creature of Title III and AAFAF is a creature of the Enabling Act is irrelevant. We're both creatures of statute. You have to look at the language of the statute to determine what the scope of the powers are that the particular entity can pursue. In that respect, the committee's authority and AAFAF's authority are perfectly parallel. So the risks they are talking about is not any greater or less if AAFAF is a co-trustee or the committee is a co-trustee.

Your Honor -- and I think that's going to hold true with respect to AAFAF acting as a creditor as I alluded to earlier. As we mentioned in our papers, PRASA is a creditor of

PREPA and has claims that PREPA has acknowledged that are general unsecured claims.

Your Honor referenced this, and I think you were exactly right, they allude to a conflict of interest between PREPA and PRASA in their papers as somehow that's disabling in respect of this motion. But if anything, it is exactly backwards, your Honor. PRASA's a general unsecured creditor to PREPA. To the extent the RSA is not approved, the plan is not confirmed, PRASA will be aligned with PREPA in the lien challenge. They will be the beneficiary because they are a general unsecured creditor.

Your Honor, unless you have questions, that's all I have.

JUDGE SWAIN: Thank you very much.

Now we have representative of Assured.

MR. NATBONY: Good morning, your Honor. I think I have a minute and a half.

JUDGE SWAIN: Yes.

MR. NATBONY: Assured believes that the government parties' offered resolution is a reasonable one and supports the government parties' motion to appoint AAFAF. We believe that it ameliorates possible Aurelius issues, also consistent with the RSA obviously to which we are a party. When we look at the issue, we don't see a refusal. You heard the government parties tell your Honor that they will be filing the lien

challenge on Monday.

So why is the UCC seeking this? Well, I think they want a hand in the mixing bowl when it comes to the RSA. Whether it's through a backdoor approach, whether it's something that happens after the 9019 is dealt with. There is some ability to control when you have some connection with respect to the ability to bring lien challenges. We don't think there is an appropriate justification. I remind the Court that the UCC is an anticipated and is an objector to the RSA, which hasn't been mentioned yet.

Other than that, your Honor, unless you have questions, those are my points.

JUDGE SWAIN: Thank you very much.

MR. NATBONY: Thank you very much, your Honor.

JUDGE SWAIN: And now representative of National.

MR. BEREZIN: Your Honor, we cede our time.

JUDGE SWAIN: And I have the Ad Hoc Group next. Good morning Mr. Mayer.

MR. MAYER: Good morning, your Honor. I think I only have two minutes.

JUDGE SWAIN: You are down for one and a half, but there's been some ceding.

MR. MAYER: I'll try to keep to 90 seconds.

We support the appointment of AAFAF as a co-trustee for the reasons that have been set forth. I wanted to add a

few technical observations. First, your Honor does have authority to appoint anyone as a trustee. Because of the elimination of Section 3.1 from Title III, 321 only allows a "person" to serve as a trustee. Because 321 is not entitled to Chapter 9 your Honor can appoint a governmental unit.

I would argue that Section 1103(c), however, needs to be read in conjunction with Section 321. That is, Congress never intended that a committee should serve as a trustee. Even though 321 is not included in Title III, I think 1103(c) should be read in conjunction with 321.

Should we find ourselves on the receiving end of a lawsuit brought by the committee, we will of course make these arguments. Appointing the committee as the trustee buys no certainty here. It just buys challenges into the future.

A final observation. The committee has not outlined -- I'm sure it says this in its papers -- any challenges that fall under the avoidance powers of Section 926. Quite apart from the fact that means that they don't really have a power to act as trustee, it means there is no statute of limitations issue here. Because 926 only deals with avoidance action powers, avoidance actions are the only ones that are subject to the statute, and the committee doesn't seem to be seeking them in the first place. Thank you.

JUDGE SWAIN: Thank you, Mr. Mayer.

Mr. Kleinhaus.

MR. KLEINHAUS: Good morning. Emil Kleinhaus from Wachtell, Lipton, Rosen & Katz for Cortland, which is an agent for fuel line lenders. Fuel line lenders, as your Honor has heard, are owed approximately $700 million. They are the primary financial creditors of PREPA and are intended objectors to the RSA.

Two very brief points. One is we did file a statement at docket no. 1372 in support of the committee's motion and we stand by that statement and believe the committee is the better and appropriate trustee here.

The second point is actually something your Honor said. There is a difference between intercreditor litigation and claims by a debtor under the avoidance powers. And Mr. Mayer actually just said the same thing in a different way. Our view as the fuel line lenders is there are substantial objections under Section 502 of the Bankruptcy Code and Section 506 of the Bankruptcy Code that are available to the bonds liens and their claims, separate and apart from any claims under the avoidance powers.

Now, 926 only deals with the avoidance powers. It doesn't in any way affect 502 or 506 rights. So we were ready to object to the stipulation on the basis that the definition of lien challenge was so broad that it could be read to affect creditor 502 objections or 506 objections.

Thankfully, we were able to work cooperatively with

the oversight board yesterday on language to avoid that objection. So if the Court does not sustain the committee -- does not grant the committee's motion and instead enters the AAFAF stipulation, there is new language in footnote 3 of the stipulation and paragraph 7 making absolutely clear that this stipulation will not affect creditor challenges under 502 or 506. Of course, the oversight board reserves all of its rights to respond to any such challenges. Likewise, Mr. Despin has represented to me to the extent the creditors committee motion is granted, the order will likewise have the committee's request be clarified to make clear that this only relates to avoidance actions, not to creditor rights under 502 or 506 or any other provision. Thank you very much, your Honor.

JUDGE SWAIN: Thank you Mr. Kleinhaus.

Mr. Despin.

MR. DESPIN: Very briefly, your Honor. First there's no RSA issue here. One, because the RSA has not been approved. And two, we've said that if your Honor approves the RSA, you can modify this order, the order we're proposing, so we're giving you a blank check to do that. So therefore, this argument that this is really to stop the RSA and all that, that's not the case.

Going back to the fundamental issue, which is what is the risks here. What really struck me is the fact that the holders are not -- and I thought they would come up here and

say we are waiving any arguments that we're challenging -- that we could challenge AAFAF as a co-trustee. I didn't hear that. But more importantly, there's one person we haven't heard from at all, which is the indentured trustee. Counsel is in the courtroom. That party's probably the holder of the secured claim. That party has not said we are -- if you appoint AAFAF we're not going to challenge that, promise, no issues. They're not saying that.

JUDGE SWAIN: Have they said that about other appointment of the UCC?

MR. DESPIN: But the point is they cannot be a challenge to the appointment of UCC. Other than the whole case is gone, which is not an argument because then none of this matters.

That argument was bizarre, which is under 321, neither AAFAF nor the committee could be a trustee. 321 doesn't apply but we reserve our right to argue that -- it's just -- yes, anybody can make all sorts of argument as to whether the committee is not a proper party. But there is -- I would say 100 years, but there is at least 75 years of case law that says that trustees can be appointed to prosecute in the name of the debtor claims.

And so, to compare that to the complete absence of case law cited by AAFAF, as to their statutory capacity, we cited a case, of course it didn't involve the AAFAF statute.

But basically these powers should not be applied when we're dealing with a Puerto Rico governmental entity, the power should not be applied. That's all the argument that was made by O'Melveny, well, we can deal with negotiations. Therefore, we can sue in the name of somebody else. That is really beyond the pale.

They talk about that statute talks about negotiating, acting in a coordinating fashion with the oversight board, etc., etc. And the only part that talks about suing or talks about suing in its own name. We didn't say they can't be a trustee. We are saying under state law, territory law, they don't have the capacity to do that.

(Continued on next page)

Mr. DESPINS: So, your Honor, the point I would make is if you rule in our favor, what's going to happen? What's going to happen is the board will enter into the same stipulation we just actually entered into 45 minutes ago on the other matter, and it will be the same as with the Commonwealth and HTA, and things will be no more disrupted than they were when that happened.

I don't think you've heard any complaints from the Oversight Board about the committee being a co-plaintiff on either of these situations. So, at the end of the day this is all about they want to protect the RSA, and that's fine, but the RSA is not being challenged or is not being affected by this appointment.

And this argument that this is important to the transformation of Puerto Rico, there is no evidence of that, so your Honor cannot rely on that. There is absolutely no evidence in the record that somehow the people who are bidding on privatization are following this or somehow are going to be motivated one way or the other by this.

So, at the end of the day, your Honor, it's a question of risk. And if it turns out that a court determines that the Board's proposed fix to the earliest issue does not work because AAFAF is not the right party for that, I think we're going to be in a world of hurt, and I don't think there is any credible argument that's been made that the committee cannot be

appointed, well, first because we've already crossed that bridge, and the only argument I heard is 321, but that doesn't apply, so I just don't see it.

So, I want to be clear about this, we are opposed to the RSAs. There is no doubt about that; we said that in our papers. This is not an attempt through the back door to sidetrack that, and I think we've tried very hard to make sure that's clear, your Honor, by agreeing that we're not going to do anything if you grant us the standing, other than file the complaint with the Board, and so this is not an attempt to do that. It's purely an effort to avoid unintended consequences. Thank you, your Honor.

JUDGE SWAIN: Thank you. I will now make my ruling.

Pending before the Court are, first, the Urgent Motion of Official Committee of Unsecured Creditors for Order Pursuant to Bankruptcy Code Section 926(a), Authorizing Committee to Pursue Certain Avoidance Actions on Behalf of Puerto Rico Electric Power Authority, which is docket entry 7484 in case 17-3283, and I will refer to it as the "Committee's Motion".

And, second pending before the Court is the Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Approve Stipulation Appointing the Puerto Rico Fiscal Agency and Financial Advisory Authority as Co-Trustee in Connection with Lien Challenge. That is docket entry number

7686 in case 17-3282, and I will refer to that as the cross motion.

Pursuant to the Section 926 motion, the Committee motion, the Official Committee of Unsecured Creditors seeks an order pursuant to section 926(a) of Title 11 of United States Code -- the bankruptcy code -- made applicable to these Title III cases by section 301(a) of PROMESA, appointing the Committee as trustee for PREPA to pursue the Lien Challenge as defined in the motion against any potential defendants that have not entered into tolling agreements that include the Committee as a party.

The cross motion seeks the appointment of the Puerto Rico Fiscal Agency and Financial Advisory Authority -- which I refer to as AAFAF -- as co-trustee in connection with the Lien Challenge. And note that in subsequent submissions the definition of Lien Challenge has been narrowed.

The Court has considered carefully all of the submissions of the parties as well as the arguments made in court today. For the reasons that I will now explain, the Committee's motion is granted in part and denied in part, and the cross motion to approve the stipulation appointing AAFAF as co-trustee is granted.

Section 926(a) of the Bankruptcy Code provides that if the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a) or 550 of the Bankruptcy Code, then

on request of a creditor the court may appoint a trustee to pursue such cause of action. In connection with the Committee's motion, the Committee has failed to meet its burden under Section 926(a) of showing that the Oversight Board has actually refused to bring the lien challenge. Rather, the submissions indicate that the Oversight Board is prepared to either bring the lien challenge or enter into appropriate tolling agreements to pursue the lien challenge in accordance with the terms of the RSA. The Oversight Board also proposes to partner with AAFAF in bringing the lien challenge. Clearly, there is no refusal in any literal sense, and the Committee hasn't argued that there is a refusal in a literal sense.

The Committee instead takes a conceptual approach, arguing that the existence of the risk that the First Circuit's holding as to the constitutionality of the Oversight Board is currently constituted will be given effect, and we refer to this as the Aurelius risk, that that risk renders any undertaking by the Oversight Board to pursue the litigation an effective refusal to ensure that the litigation can be carried through if the First Circuit decision takes effect. In this connection in its written submission the Committee mischaracterizes the Court's prior oral ruling concerning a joint litigation stipulation for the prosecution of certain causes of action of the debtors. At the April Omnibus Hearing the Court stated that the unique circumstances presented a

situation in which the Oversight Board had "decided to share its responsibility prosecute certain claims, and it had, therefore, effectively refused to pursue the causes of action to the extent that it has sought by means of the motion to have the Committee share responsibility for prosecution of the causes of action." The Court did not have to address, and did not address, then the proposition that a refusal to sue in a joint capacity and instead pursue litigation on its own or with someone else would somehow constitute an Oversight Board refusal for Section 926(a) purposes. In any event, the Oversight Board now proposes to pursue litigation jointly with AAFAF, a structure that is consistent with the one approved in the earlier rulings. In this case, the Oversight Board has refused to sue jointly with the Committee. It has not refused to pursue avoidance litigation. Instead, the Oversight Board represents that it is prepared to bring the Lien Challenge either on its own or with AAFAF, or enter into appropriate tolling agreements to preserve the Lien Challenges. Accordingly, neither express nor conceptual refusal exists to support the Committee's motion.

With respect to the Cross Motion, the Oversight Board's decision to share its responsibility with AAFAF rather than litigate alone supplies the requisite refusal under section 926(a), as this Court has stated in connection with the approval of the prior joint litigation stipulations. The

"request of a creditor" requirement imposed by Section 926(a) of the Bankruptcy Code has been satisfied here as well. Tradewinds Energy Barceloneta, LLC, and the Committee have both requested the appointment of a trustee pursuant to Section 926(a). Thus, a request for a trustee has been made in this Title III case by at least one creditor. The Court exercising its unfettered discretion may appoint AAFAF instead of the committee as co-trustee.

The Court finds the Committee's arguments with respect to AAFAF's authority to sue unpersuasive. The Enabling Act authorizes AAFAF to act on other behalf of other commonwealth entities, to coordinate with the Oversight Board, and to act in aid of restructuring, and Section 5(d) of the Enabling Act includes broad authority for AAFAF to take any action or measure necessary or convenient to exercise the powers conferred by the Enabling Act or by any other law of the Legislative Assembly of Puerto Rico or of the United States Congress. That is Section 5(d)(xiv) of the AAFAF Enabling Act.

In summary, the Committee's motion constitutes a request by a creditor as required by Section 926. However, it fails to establish that the Oversight Board has refused entirely to bring on the avoidance action. The pleadings established that the Oversight Board is willing to proceed but not with the Committee as co-plaintiff or co-trustee. The cross motion establishes that the Oversight Board is refusing

to proceed alone in light of the Aurelius risk and is willing to partner with AAFAF in bringing any necessary lien challenge litigation. Accordingly, the Committee's motion is granted only insofar as it seeks the appointment of a trustee, and the cross motion is granted insofar as it seeks the appointment of AAFAF as a co-trustee. The Court approves the form of stipulation filed last night at docket entry 7720, and the government movants are directed to e-mail a proposed order in Word format to chambers promptly. Thank you.

I will now turn the bench over to Judge Dein.

Mr. Barak?

MR. BARAK: Just one housekeeping matter, your Honor. There is a July 11th hearing set under the disclosure and discovery schedule, and there is no time assigned to it, so we would just alert the Court to that.

JUDGE SWAIN: That will commence at 10 a.m. on July 11 here.

MR. BARAK: In New York, your Honor?

JUDGE SWAIN: Yes, in New York.

MR. BARAK: Thank you.

JUDGE SWAIN: Thank you.

DEPUTY COURT CLERK: All rise.

JUDGE DEIN: You may be seated.

So, we are here on the motion to approve the avoidance action procedures. I think it makes the most sense to do an

overview here, if there is any opposition, address that, and then we can deal with specifics.

MS. SIERRA: Yes, your Honor.

Good morning. Rosa Sierra for the movant, the Special Claims Committee of the Oversight Board, acting by and through its members.

Today, your Honor, we are here to request approval of the omnibus motion by the Special Claims Committee and the Official Committee of Unsecured Creditors for the approval of the litigation case management procedures and approval of settlement authority and standards, at docket 7325 in the Commonwealth's Title III case, and also the reply at docket 7530, which contains the revised avoidance actions procedures which substantially resolve many of the objections that we received to the motion.

JUDGE DEIN: I am assuming that that's the one that we are working off of.

MS. SIERRA: Yes, we are working off that one as the operative procedures, yes.

By way of background, your Honor, between April and May 2019 the Special Claims Committee and the UCC have filed approximately 250 avoidance actions. They're all premised on pre-petition transfers and the recovery of those transfers made to hundreds of suppliers and vendors of the government of Puerto Rico. These actions are listed as Appendix 1 to the

revised avoidance action procedures, and we also note that we have entered into approximately 85 tolling agreements with several of these vendors as well.

Generally, the avoidance actions are premised on Sections 544, 547 and 548 of the Bankruptcy Code, and Title II, Chapter 5, section 97 of the Puerto Rico Code.

The avoidance actions are the result of an extensive review of the Title III debtor's pre-petition payment history. And since the filing of these avoidance actions, your Honor, the movants have launched an informal resolution process for all of these avoidance actions, and they're meant to facilitate the out-of-court resolution of these actions before any litigation is contemplated in the avoidance actions.

The movants have heard the concerns of the Puerto Rican business community that this litigation could be very costly and disruptive to their businesses. Therefore, we have instituted the informal resolution process which proceeds in four phases we call it.

Phase 1, what we are calling the information exchange, is mostly spearheaded by the local Puerto Rican council on the ground, and the financial advisors to the Special Claims Committee. The information exchange contemplates that in the first instance we will request certain information from the defendants to substantiate the prepetition payments that they received, and we in turn will provide the defendants with the

information we have that forms the basis for our claims, and with the hope that in this information exchange we can resolve the avoidance actions once we determine whether a vendor has substantially verified the payments that they've made and that such payments that they've received were given with value.

Phase 2 then contemplates the first instance where we will offer vendors who otherwise haven't sufficiently satisfied their payments an opportunity to settle. And that settlement would be largely guided by whatever settlement authority and procedures are approved by this Court as requested in our procedures.

Phase 3 then would be the mediation process, again voluntary, and subject to the framework and guidelines we have requested and approved by this Court.

And then phase 4 and the last instance contemplates litigation, and that would just be if the prior three phases do not resolve the action, then at that point then the parties can proceed to litigate.

But just to be clear, this process is completely voluntary and loosely structured, and it's really just meant to provide parameters and guidelines to resolve the hundreds of avoidance actions that have been filed. We recognize that these avoidance actions are not only burdensome to this court but burdensome and costly potentially to the defendants, and the procedures are really just meant to facilitate the

organization of these actions and deal with them in an organized fashion.

JUDGE DEIN: Have you undertaken any of the information exchange already?

MS. SIERRA: Yes, your Honor. That actually brings me to my next point.

So, we have begun the information exchange already. We have sent out letters requesting certain information. We have already been in contact with over 100 vendors, whether that be tolling agreement parties or defendants to the avoidance actions. We are in constant communication. The parties have begun submitting information. We have had our financial advisors have meetings in Puerto Rico and meet with many of the counsel to various defendants; so the process is going, and we expect that it will soon lead to the resolution of many of these actions.

And that's really where the motion comes in. Although we haven't requested approval in the motion and the procedures of the information exchange, we think that certain features of the avoidance action procedures will greatly facilitate this point, so if your Honor would like, I'd like to walk through these features of the avoidance actions.

JUDGE DEIN: I think I would actually like to hear any opposition to the structure in general first.

MS. SIERRA: OK.

JUDGE DEIN: And then we will go back.

Mr. Mudd?

MR. MUDD: Good morning, your Honor. John Mudd, in representation of Alpha Guards and Cabrera and Ramos, and I would add that they are two defendants in this case. In general, I agree with the proposed order, but there are certain things that must be put into perspective. First of all, exchange of information is kind of incorrect. We are told, give me this, I have to negotiate, telling the other side, hey, guys, I need your information too. The procedure does not provide for exchange of information. In our motion we suggest. And it's very important that the Board started their argument saying and talking about this informal process at the same time their motion says, no, we're not dealing with an informal process; we're dealing with this motion as to procedures. They're intertwined. They are definitely intertwined. And I think the process should start when the service process is done. They should exchange information, provide the information they already have.

Why is that important? Not only is the lawyer -- namely us -- expensive, but, for example, in Alpha Guards we are talking in the period 7200 bills. Each bill would have the -- because these are security guards -- the signature of security guard and the hours they worked. We are talking about huge amounts of information. OK?

JUDGE DEIN: But isn't this something that you on an individual case-by-case basis can discuss with the other side and talk about what's the most appropriate exchange?

MR. MUDD: True, except for one small detail.

JUDGE SWAIN: OK.

MR. MUDD: Right after the complaints were filed and during one of the Board's meetings -- which I was present -- Judge Gonzales started talking about the process. And the Board has continuously mentioned the process is to make this cheaper, which is a great idea, but you do need two things. You do need, you know, a client who knows his business, and you need a lawyer.

Now, the way this process is going, the informal process, it may simply be that the defendant will want to stay away from the lawyer -- which is an extremely big expense -- and do it himself. And that's another point I want to point out. Even if you look at all of the causes of action in the avoidance actions -- and I read them all -- they are all bankruptcy avoidance issues, except for what I'm going to call the Accion Pauliana, which is in Spanish, which is the Puerto Rican law claim. It has nothing to do with whether payments were valid or not. It has to do with two things, according to the Board, which is, one, was the government of Puerto Rico insolvent? Number one. Did the defendant know it?

Now, in our motion to dismiss -- which is not an issue

here -- we mentioned that there are several other requirements under civil law. But even if you solve and everything was done according to the bankruptcy law, you still have that cause of action there, which has nothing to do with payments being done correctly. So, theoretically, even if everything is kosher, you could still have the litigation. And that's where I go into another issue, which is the actual motion, the last point, 7530. On page 4, where an avoidance action will be dismissed pursuant to the settlement between the parties, the Oversight Board and committee should leave open the ability to request that said dismissal be with prejudice.

I think it should be the other way around, there is no "should be with prejudice" unless they show why not, because of exactly this situation I mentioned.

JUDGE DEIN: I'm trying to figure out what you're asking. Do you think that the informal exchange process should go forward?

MR. MUDD: Oh, yes. Oh, yes, I have no problem with that, because it's cheaper if everything goes according to schedule.

JUDGE SWAIN: All right. So that you want to keep in.

MR. MUDD: True.

JUDGE DEIN: And your concern is that what?

MR. MUDD: My concern is that, number one, the Board -- and the procedure states that the defendants give the

information. I believe that also the Board should implement when they serve the process, provide the information they have. It will help the defendant look for all the information they need but also give some information.

JUDGE DEIN: OK. And we can talk about that when we get to the specific language, because I do think that the order should address the information exchange.

MR. MUDD: Yes.

JUDGE DEIN: But your understanding though -- and my understanding -- is that there is room for discussion about how to exchange information most efficiently.

MR. MUDD: I have no problem with that. And actually in our motion and discussions that I had with the Board -- which have been fruitful -- this that I'm meaning here was brought up, but that was not fruitful.

JUDGE DEIN: OK. So, now when you're talking about at page 4, what's your concern here?

MR. MUDD: My concern is that given the nature of these procedures and the cost it is to clients, that the dismissals, when there are, should be -- the default should be with prejudice instead of the default being maybe we'll do it with prejudice.

JUDGE DEIN: So, this has to do though with how the parties negotiate a settlement, right? So presumably you can negotiate and say -- or mediate, or however you're working to

resolve this -- and say, listen, we're not going to settle this unless it's with prejudice.

MR. MUDD: True.

JUDGE DEIN: And this agreement provides that the Board has settlement authority to enter into settlements with prejudice.

MR. MUDD: I think it's understood.

JUDGE DEIN: So I think that that concern -- I think they heard you, but I think that the revised draft does allow for that.

MR. MUDD: Probably. But that's my point, it should be that way. And there should be a possibility that, you know, for whatever reasons the Board says, well, this should not be with prejudice because. That's no problem, because theoretically there can be situations in which it shouldn't be with prejudice, but in general it should be, like the default process.

JUDGE DEIN: OK.

MR. MUDD: Now, let me go through another one.

Oh, there is a very important thing, page 5, footnote 6. Now, I have no doubt that this was done, namely that these procedural papers were sent to all defendants. However, my two clients in their cases -- and that's the only thing I can talk about -- the addresses were incorrect. And I will give you one example. Cabrera & Ramos had a private PO box that was

destroyed by the hurricane, so they went to the agency and said, hey, guys, when you send my payments put this address. Now, for whatever reasons there are, that address was not put in the complaint or anything, in the service of process, etcetera, and that's a mistake.

I have no problem with the Board having sent that, but the question is how many of them were sent back because the address was incorrect. I feel that most of them will not. So, I think we should be concerned about that and make a provision for it. And that I believe is all I have.

JUDGE DEIN: OK. So, what I'm hearing then is that there is general approval or agreement to the overall structure with maybe some fine tuning.

MR. MUDD: Yes.

JUDGE DEIN: But the structure -- and I think it's a good structure too, so that's all you need to know actually, so it's approved -- but I do have some problems with specifics.

So, what I want to do is ask Ms. Sierra to come back up to the podium, go over some specifics, and then, Mr. Mudd, if you feel that -- I don't think there are any other objections, correct? OK.

So, if you feel that some of the specifics that I'm going over need further clarification, just raise your hand, and I will hear what you have to say. What I'm contemplating is I think it needs to be revised, so I'm contemplating a

revision that will be another draft, and certainly we can allow some time once the other draft is submitted to have further objections.

MS. SIERRA: OK.

MR. MUDD: Possibly meet and confer?

JUDGE DEIN: Yes, I think that makes sense.

So, first of all, I am going to ask that the final version sort of follow exactly what you said, which is the order of what is actually happening.

MS. SIERRA: OK.

JUDGE DEIN: So, I think it needs -- and I do think we need to add the information exchange, which I recognize you're not asking for approval of, but I think -- as I understand it, these procedures are being sent to everybody, right? So, we want people to be able to understand the process that's contemplated and what all of their alternatives are.

So, I think the first section has to have an information exchange. I think you then go to the settlement, which starts on page 24. I'm using the pages of document 7530. Then I think you need to explain mediation, which is on page 22, and then the litigation on page 19.

MS. SIERRA: OK.

JUDGE DEIN: So, that's the final. What I contemplate is that somebody gets this and has some idea what they're supposed to do and what is happening next.

MS. SIERRA: Of course.

JUDGE DEIN: OK. So I'm going to keep talking, and then you're actually allowed to interrupt me and say what are you talking about.

MS. SIERRA: OK, sounds good, your Honor.

JUDGE DEIN: All right. So, we will start with the notice of applicability. I think in there you do need to explain the information exchange. And what I think you do -- something to the effect that the parties to these -- it's out of your motion really -- but the parties subject to these procedures shall have the opportunity to share information and potentially resolve cases as provided for by the procedures established by the Oversight Board and the UCC available at and give the site. I think you also need to make it clear that people are free to opt out.

MS. SIERRA: Yes.

JUDGE DEIN: And they're free to file a responsive pleading at any time. And I think in the beginning you also need to state that if there are new people added, that they have the opportunity to object to these procedures.

MS. SIERRA: OK.

JUDGE DEIN: Let me say I'm going to go over this item by item. If anybody feels the need to leave, you can. That's what we will be doing. All right? And I think the only thing remaining will be the discussion of the schedule, correct?

That's coming up next?

JUDGE SWAIN: Yes.

JUDGE DEIN: All right. So that having been said, I'm going to keep talking. So I'm on the first page where it says the litigation procedures and deadlines, part B, has a service copy to me. That can come out; we will just take it off the ECF, it's easier.

When you have the pro se section, part C, I think you need to make it clear that that's in addition to the requirements for the pro se parties' filing in Puerto Rico. And I believe that includes delivering a hard copy of the pleadings to the clerk's office, so that section should actually cite to where a pro se litigant can find the filing requirements that they need to comply with.

MS. SIERRA: OK.

JUDGE DEIN: Part D where you talk about effectuating effectuation affecting service, I'm going to ask you to work with the clerk's office on that and make sure that the most appropriate procedure works.

MS. SIERRA: Yes, your Honor.

JUDGE DEIN: And I guess, Mr. Mudd, I think that's where we can resolve the issue of is everybody getting served. You will figure it out soon enough if you don't have an address or a valid address.

Then I don't have any comments until we get down to

(ii). We are talking about service of the response to the complaint. I think at this juncture I don't think this needs to be modified, but for your information if there is a responsive pleading at that juncture the Court will issue the order of notifying parties of their opportunity or option to consent to a magistrate judge. It's a standard order, and it's all blind, and if both parties consent to file something it's just the standard order, but I think that's the juncture where the court would do that.

MS. SIERRA: To be clear, you don't want us to add that.

JUDGE DEIN: You don't need to add that. I just want you to know that that's where we see the trigger.

MS. SIERRA: OK.

JUDGE DEIN: When we get to page 3, or page 21 of 39, dealing with discovery, first, with respect to the schedule, I think we need to put in there -- or you need to put in there -- any disputes in the scheduling will be decided by the Court either on submission or hearing if ordered by the Court.

I'm going to assume that you're going to order a transcript, so I think these will all come out. This way I'm going to give you words, but I'm going to assume you will just copy them from the transcript.

MS. SIERRA: OK.

JUDGE DEIN: It will also need to say in there that

the proposed schedule will constitute the parties' report pursuant to Federal Rule of Civil Procedure 26(f), and the Court's order shall constitute the order required by Federal Rule of Civil Procedure 16(b). We need that to comply with the rules of dealing with these adversary proceedings.

The next page when we're dealing with hearings, I think we need an "unless otherwise ordered by the Court". With respect to the scheduling of the hearings, the Court should be able to vote on whether or not this is done at the omnis or not. And the parties requesting a hearing does not have to be for good cause shown. Take that out.

MS. SIERRA: OK.

JUDGE DEIN: And, similarly, when you get to the trial, if everybody is following me, a trial concerning the avoidance action shall occur on a date that is acceptable to the Court. And the parties may propose dates in a filing made no longer than 90 days after the close of discovery. So, the Court is going to schedule a trial, not you.

For the mediation, I actually have some -- I need to understand the structure of this better.

MS. SIERRA: Of course.

JUDGE DEIN: I'm concerned that we make sure that the mediators don't have any conflicts.

MS. SIERRA: OK.

JUDGE DEIN: So, I'm not sured whether retired state

court judges are appropriate, given the claims in this action.

I also don't think it's appropriate for the Oversight Board as a default to select the mediator. If you can't agree -- at this stage, mediation is problematic, let's start with that thought -- but I will propose -- though I'm not bound to -- maybe a list of acceptable mediators and a process where the Oversight Board will randomly select a mediator from an approved list, or something like that, but I don't think that you can have the control of the absolute selection.

MS. SIERRA: Yes, your Honor, we will make that change.

JUDGE DEIN: So, I think you need to just think about it, and I don't have the answer. I don't know who is an appropriate pool, but I question -- you can try to convince me this is the right pool, but I'm not sure.

MS. SIERRA: Right. Your Honor, we have worked closely with local Puerto Rico counsel to come up with the mediation framework and the guidelines, and this was a suggestion that they made in terms of potential for having noncontroversial mediators and also people who are in Puerto Rico and close to these types of matters. But, your Honor, we are open to reconsidering that and working with something that seems more appropriate.

JUDGE DEIN: I think you need to just think through the conflicts question.

MS. SIERRA: OK.

JUDGE DEIN: I also want to know or make sure that you thought about appropriate venues for mediation. I am assuming you're not expecting the Court to provide those venues. I am also assuming that you're not expecting the Court to provide resources.

MS. SIERRA: That's correct, your Honor. We designed these keeping in mind not overburdening the Court with mediation, and largely trying to design it so it's a structure that is still somewhat loose that the parties can by agreement sort of dictate on their own.

JUDGE DEIN: OK. And I am assuming that you are going to negotiate payment structure, and that you will let the Court know when you file a notice of mediation.

MS. SIERRA: Exactly.

JUDGE DEIN: So think about that. I think it needs some refinement.

When you do get to the mediation section, you dictated sort of when the parties need to provide reports, and how long they are I think it's all about it being unless otherwise ordered by the mediator.

MS. SIERRA: OK.

JUDGE DEIN: I think the mediator can control that.

MS. SIERRA: OK.

JUDGE DEIN: When we get to settlement authority, just

explain to me how you got the 10 million. Why is that the cut-off?

MS. SIERRA: Yes, your Honor. We arrived at that threshold because approximately two thirds of the defendants fall at the $10 million or less threshold, and for that reason we're trying to in the best way we can facilitate the most amount of settlements, you know, settlement agreements that could be effected without further order of the Court to encourage parties to settle and know that that wouldn't provide, you know, cost on them to have to file a motion every time a reasonable settlement agreement is reached. So, that's where we got the $10 million threshold, just this is our best attempt at finding a threshold and a balance between at what point we don't need further Court approval and then at what point we do and we have to meet our burden under Rule 9019 and whatever the case may be.

JUDGE DEIN: You're only going to have to meet that burden if it's objected to even over the 10 million? Is that what this proposes?

MS. SIERRA: Yes, that is what this would contemplate.

JUDGE DEIN: And so if you ask for court approval in the face of an objection, it would be a 9019?

MS. SIERRA: Yes. Yes.

JUDGE DEIN: OK. So I think we are OK with the 10 million, that's fine.

The case has to be closed -- I guess it's subpart A -- but if you've settled, you need to file whatever is appropriate under Federal Rule of Civil Procedure 41, whether it's a dismissal, or a motion or whatever it is.

MS. SIERRA: OK.

JUDGE DEIN: But you need to put that in.

MS. SIERRA: OK.

JUDGE DEIN: So, the objections. I understand your desire to keep this as confidential as possible, but I don't know what filing anything that just says this is the number without identifying anything is a way to have people validly object to it. So, I guess I will hear you on that. My sense is that you do have to identify the adversary proceedings, the parties, the deadline for objecting, and then if there is any reason you can't do that, you should file a motion.

MS. SIERRA: Your Honor, we can definitely reword the settlement procedures in the way you've requested suggested.

JUDGE DEIN: All right. Because I expect that if we're asking for objections, people ought to know what we're talking about.

MS. SIERRA: OK.

JUDGE DEIN: So you will need to clarify that.

And if no objection is filed, it's OK that it gets approved, but again you will have to file the appropriate dismissal order.

MS. SIERRA: Right.

JUDGE DEIN: And then if objections are filed, the Court shall in its discretion decide if a hearing or further submissions are necessary.

And then I think if it's reorganized, then it makes sense so that people reading it can figure out exactly what happens next.

MS. SIERRA: Yes, your Honor.

JUDGE DEIN: All right. Mr. Mudd, do you want to add anything?

MR. MUDD: If I may. John Mudd again.

In general, your Honor, I agree with what you're suggesting. I have a little observation to make. You made quite correctly a mention of the former judges of Puerto Rico. There is an adversary proceeding of the retired judges in Puerto Rico against the Board because of the pensions, so any former judge would have to be a judge that doesn't have a pension. OK? That's one. Two, there is an ADR procedure in federal court in San Juan, and it has ADR persons there, so we could theoretically deal with that and maybe that will help.

JUDGE DEIN: So I decided that it was probably inopportune for me to stack the other magistrate judges' dockets in Puerto Rico with 200 new cases. That probably wasn't a good plan.

MR. MUDD: They won't like you if you do that.

JUDGE DEIN: So I don't know though if there is a specific large case that maybe might make sense to request a mediation. I don't think this is precluded in this, but I think they're quite busy, so I'm not about to add --

MR. MUDD: I can assure you of that.

JUDGE DEIN: Right, so I'm not sure that adding that is an appropriate option.

MR. MUDD: OK. And also I suggest that the mediator be by agreement, and the Board can suggest the persons, and in that suggestion the cost, etcetera, be made clear, because theoretically still you may have a party that doesn't have a lawyer dealing with this, and it would be better that way.

And last but not least, given the amount of cost here, I think that the default should be Puerto Rico for a mediation. Of course there are cases in which it's not necessarily true, but that would be again the preferred place.

JUDGE DEIN: I think that it says that, but I could be wrong. I don't remember if it says or if I read that somewhere, but I think that's true that the parties -- I think the process was expected to take place in Puerto Rico to the extent possible.

MR. MUDD: I would agree with that. That would be all, your Honor.

JUDGE DEIN: And I think the preference is a joint selection of the mediator. It's a better way to start off.

MR. MUDD: Yes, thank you. That will be all.

JUDGE DEIN: Ms. Sierra, could you just stand up so you can be heard. I want to figure out the schedule. How long do you think it would take to revise these?

MS. SIERRA: I think it shouldn't take that long. I think the only thing that we have to go back a little bit to the drawing board is on the mediation, and we may need to confer with local counsel and firm that up a little bit more and the details of that a bit more. A week?

JUDGE DEIN: I'm not going to set an order actually. File it as soon as possible.

MS. SIERRA: OK.

JUDGE DEIN: With a four day objection period. And then if I don't have any objections -- or I'll take any objections on the papers, but I'm going to approve the general process.

MS. SIERRA: OK.

JUDGE DEIN: So, if anybody has an objection to specific wording or anything, file it within four days after the filing of the revised procedures. OK?

MS. SIERRA: Great. Thank you, your Honor.

JUDGE DEIN: Thank you.

MR. DESPINS: Your Honor, just a procedural thing that I need to raise with you. Good morning, Judge Dein. Luc Despins for the Committee.

You will recall that we filed motions to stay various adversary proceedings, and you entered orders. And in the ERS case there were six adversary proceedings. Unfortunately, in our motion we missed one, so technically there is no order in that adversary proceeding staying. Would it be OK if we submitted an informative motion explaining that and attaching a proposed order in the same format we have done before?

JUDGE DEIN: Yes.

MR. DESPINS: Thank you, your Honor.

JUDGE DEIN: Anybody else? OK, thank you.

DEPUTY COURT CLERK: All rise.

JUDGE SWAIN: Please be seated. And so I am back just to essentially remark that we're done unless anyone has anything else for me.

This concludes the scheduled proceedings for today. As of this moment, the next scheduled hearing date is the July 2, 2019 hearing on the ERS adequate protection/lift stay motion, which is scheduled to begin at 10 a.m., but there is also a filing required in 15 minutes, which may change that, so we should all watch our mail.

And then after that the next scheduled proceeding is on July 11, 2019 at 10 a.m., the pretrial conference concerning the PREPA 9019 litigation, and that both of those conferences will be in New York with video connection to San Juan.

And as always I want to thank the court staff here in

Puerto Rico and in Boston for their work in preparing for and conducting today's hearing and their superb ongoing work in administering these cases. So, I wish you all safe travels and a good weekend, and we will be in touch, I'm sure. Take care.

(Adjourned)

UNITED STATES DISTRICT COURT)
) ss.
OF PUERTO RICO)

REPORTER'S CERTIFICATE

I, Rebecca Forman, do hereby certify that the above and foregoing pages, consisting of the preceding 80 pages constitutes a true and accurate transcript of our stenographic notes and is a full, true, and complete transcript of the proceedings to the best of our ability.

Dated this 28th of June, 2019.

S/Rebecca Forman _____

Rebecca Forman

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UNITED STATES DISTRICT COURT)
) ss.
OF PUERTO RICO)

REPORTER'S CERTIFICATE

I, Steven J. Griffing, do hereby certify that the above and foregoing pages, consisting of the preceding 80 pages constitutes a true and accurate transcript of our stenographic notes and is a full, true, and complete transcript of the proceedings to the best of our ability.

Dated this 28th day of June, 2019.

S/Steven J. Griffing _____

Steven J. Griffing

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